

# ON-THE-JOB

QUARTERLY NEWSLETTER

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ACHIEVING SAFETY IN UTAH'S WORKPLACES AND FAIRNESS IN EMPLOYMENT AND HOUSING



Deputy Commissioner  
Jaceson Maughan

## A word from the Deputy Commissioner

Hi, my name is Jaceson Maughan and I was recently appointed Deputy Commissioner and General Counsel for the Labor Commission. I have worked for the State of Utah for a number of years, most recently in the Appeals section for the Department of Workforce Services, representing the Workforce Appeals Board before the Court of Appeals and

*Continued on next page*

## In This Issue

Bringing Greater Efficiency to the Adjudication Division.....	1
Utah Antidiscrimination & Labor Division (UALD) Outreach Program.....	3
UOSH Safety Day.....	4
Utah's History for Boiler, Elevator and Coal Mine Safety.....	5
Utah SHARP Recipient   Western Metals Recycling.....	6
The New Face of Hazard Communication in the Workplace.....	7
Appellate Decisions.....	8
Rules Corner.....	10

## Success Framework: Bringing Greater Efficiency to the Adjudication Division

By: Heather Gunnarson, Director, Adjudication Division



The Adjudication Division has certain processes in place for adjudicating cases, but a recent review indicates that no one currently in the office knows why certain steps were put into place or has had the time to critically question why the system works the way it does. Some processes which made good sense when they were put into practice a decade or so ago may no longer be efficient now and as a result, our system has occasionally bogged down. So this summer the Adjudication Division began a project to evaluate and improve our process.

We began by looking at our entire process from intake to closure and asked ourselves if each of the steps we take are necessary, done by the right person and processed in the right way and at the right time. This careful examination quickly led to changes in timing and who handles various parts of our cases. For example, rather than waiting until a Motion for Review of one of our decisions has been fully briefed before handing it off to the Appeals Board for their review, we now give the case to them as soon as we get an initial motion. Expediting the cases this way gives the Appeals Board as much time as possible to issue their decision within their required timeframes, and cases are no longer "wasting time" sitting on Adjudication Division's judges' desks.

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## Success Framework: Bringing Greater Efficiency to the Adjudication Division

*Continued from page 1*

We also focused on the intake process and our analysis led us to several easy improvements. For example, the Division often receives unsigned or incomplete Applications for Hearings. This results in a long waiting time on our end while we open the case, assign it a case number, create and print a cover letter returning the incomplete Application, and then wait for the applicant to send back the completed Application: a process which can take up to several weeks.

Since it appears that the overwhelming reason for rejections is that the applicant has just overlooked critical information (like a signature), we've developed an easy checklist that customers can now use to make sure that the Application is complete before they submit it to us. Additional improvements include updating our application form so it is easier to understand and simpler to complete. We are also training our Division staff on how to use a database from the Industrial Accidents Division (IAD), so we can identify the correct insurance carrier, rather than relying on IAD staff to conduct research requests around their heavy workloads.

Finally, we took a look at our decision-writing process. While our cases involve difficult issues, they often are similar to other cases we have previously handled. To make this aspect of our work more efficient, we have developed a master list of issues and excerpts from cases that we can easily refer to when writing our decisions. Having the research we need for 90% of the cases in one spot will not only save us time, but it will also help ensure greater uniformity among our decisions.

Lasting improvement requires continuous effort. As we advance in one area, we'll be able to find savings in other areas. Therefore, we will continue our improvement efforts over the course of next year and beyond. The Adjudication Division takes seriously its mission of adjudicating workplace claims fairly, efficiently and transparently. We will continue to refine our process.

## A word from the Deputy Commissioner

*Continued from page 1*

the Supreme Court as well as providing general legal services to the Department.

Prior to that I worked as an assistant attorney general in the Utah Attorney General's Office, where I represented the State of Utah in the recovery of Medicaid funds, condemnation actions, and child support issues.

During my career, I also worked as an associate for the law firms Bostwick & Price, PC, and Olsen, Skoubye, and Nelson, LLC, where I worked primarily on construction litigation, workplace health and safety issues, and property disputes. Part of my practice specifically focused on employers who had been cited by UOSH for workplace hazards.

I began my career with the State of Utah in 1998 as a youth counselor with the Division of Juvenile Justice Services before leaving for law school.

My wife and I have three wonderful children and live in Clinton, Davis County. As a family, we enjoy sports, the outdoors, movies, and good books. We spend most of our free time doing fun things together.

I welcome the opportunity to serve the citizens of Utah in my new position and to help ensure the health and well-being of our state's economy and its workforce. My goal is to ensure the Commission maintains the public's trust and is fair, open, and transparent in its practices.



## Discount Calculator Update

The Commission has removed the online calculator. In creating the calculator the Commission employed certain assumptions which did not coincide with the assumptions used in the Utah Administrative Code. This resulted in different discount amounts than those found when utilizing the table. Unless and until the calculator is replaced by the Commission parties should use this calculator:

<http://utrules.eregulations.us/code/rule/R612-200-4?selectdate=7/27/2013\tblank>.

The Commission will likely revisit this matter in the future.

# Utah Antidiscrimination and Labor Division (UALD) Outreach Program

By: **Monica Smith-Austen**, Unit Manager, Antidiscrimination & Labor Division

Discrimination in the workplace impacts everyone. This year alone, the Division has received and will investigate over 400 claims of employment discrimination and harassment.

With a goal of providing greater service to the employers and employees of Utah, we are pleased to offer in-person training in how to prevent discrimination and harassment in the workplace. This training can also be tailored effectively to be a training on how to avoid discrimination for a supervisor as well as a presentation on how UALD investigates claims once they are filed.

We can come to your worksite. The training is done by knowledgeable investigators who work for UALD and a “*Certification of Training*” can be provided to all who participate. Training can be requested by sending an e-mail to [discrimination@utah.gov](mailto:discrimination@utah.gov).

### Currently UALD offers training in the following areas:

- ▶ What is Discrimination and Harassment?
- ▶ Sex Discrimination and Harassment - Your Rights and Responsibilities in the Workplace
- ▶ The Americans with Disabilities Act - Hiring and Retaining Valuable Employees
- ▶ Reasonable Accommodation: What Every Employer Should Know

In addition to training, UALD offers additional resources and answers to frequently asked questions in our website at [www.laborcommission@utah.gov](http://www.laborcommission@utah.gov).

## UOSH Safety Day

By: **Jerry Parkstone**, Senior Compliance Safety & Health Officer, UOSH



Senate Concurrent Resolution 9, which was passed during the 2013 General Session of the Utah State Legislature, designated June 23-29, 2013 as Workplace Safety Week in Utah. This Resolution was sponsored by Senator Karen Mayne and Representative Jim Bird. On **June 26**, UOSH (*the Utah Occupational Safety Health Division of the Labor Commission*) sent out all Consultation and Compliance Officers in full force and in “consultation mode.” As part of this project, no citations or penalties were to be issued to workplaces visited that day. UOSH prepared packets that explained the reason behind the visits, and provided the companies visited with information on how to develop a Safety and Health Management System (SHMS).

**One of our Occupational Safety and Health officers, Jerry Parkstone describes his journey on Safety Day.**

I decided to venture out on public transportation since we do not have a state vehicle for every Consultation and Compliance Officer. I took a TRAX train and got off at the 1300 South Station, and proceeded, like a Fuller Brush salesman, to walk from one business to another in the area. In one morning I visited twenty different companies, including a deli, a cabinet maker, a machine shop, a safety supply house, and a doggy day care. I asked employers what they knew about UOSH and if they could use our assistance in learning how they could improve safety for their workers.

That morning, I was also able to provide training for a roofing company that was just about to start tarring a roof. After finding out that the employer did not have fall protection on site, I was able to inform him and his employees what their options were for fall protection. I believe that this short time with the employer may have saved one of his employees from an accidental fall, which could have resulted in a serious injury, maybe not that day, but quite possibly in the future.

In total, UOSH visited 460 employers that day. The visits enabled us to introduce employers to our Consultation Program. This free service, funded by the State of Utah and Federal OSHA, assists small employers in high hazard industries to strengthen their safety and health management systems. Through this program, a consultant will visit a company’s workplace and based on the needs of the employer, will conduct a safety analysis (similar to a compliance inspection, but without citations and penalties) which includes training, noise sampling, air monitoring, or any other service that will assist the employer to improve the safety of their employees.

To learn about the Utah OSHA Consultation Program, follow this link: <http://laborcommission.utah.gov/divisions/UOSH/PrivateSector.html>.

For information on how companies can develop their own SHMS on this program please go to: <http://osha.ies.ncsu.edu/>

At the end of the day, this was a great opportunity for all our UOSH Compliance Officers and Consultants to provide information on how to help insure that every worker goes home each evening without experiencing a workplace accident or injury. With attention to safety in the workplace, we can make Utah a safer place to work for all employees.



# Utah's History for Boiler, Elevator and Coal Mine Safety

By: **Pete C. Hackford**, *Division Director and*

**Ami Windham**, *Business Analyst, Boiler, Elevator and Coal Mine Safety Division*

While conducting research for this article, we were amazed to see just how long the Division of Boiler, Elevator and Coal Mine Safety in one form or another has been around. The Utah Labor Commission, previously known as the Utah Industrial Commission, was initially established in 1917 as a regulatory agency enforcing safety rules for Utah's workers in addition to providing support for Utah's new workers' compensation law.

We thought that was all there was to the story. However, while "Googling", we found testimony provided by the State Coal Mine Inspector, Gomer Thomas, dated August 5, 1889. The first mention of a Coal Mine Inspector that we found after Utah had officially become a State was an address by Heber M. Wells, Utah's First Governor. It appears in his "Message of the Governor" when he reported to the state legislature and it also appeared in the Salt Lake Herald newspaper on January 11, 1899, which was at the end of Utah's second year after becoming a State. To put that timeframe in perspective, the same message contains a "Call to Arms" for Utah men to join in the United States' war with Spain.

So it appears that the Utah Labor Commission's beginnings were with coal mining. References to boiler and elevator inspections begin to appear around 1910; this was also found in a report by the state Coal Mine inspector. It appears that in the process of inspecting mines, the Inspector also inspected boilers and elevators for safety. We were unable to find anything more specific until we came across an article in the Ogden Standard Examiner newspaper dated December 11, 1920 covering the Industrial Commission's report to the Governor's Office. The Industrial Commission's Inspection Department at that time employed 4 inspectors that covered mines, boilers and elevators and 2 inspectors for factories and general labor practices.

The Division has come a long way since the "old days." Today the Utah Labor Commission - Division of Boiler, Elevator and Coal Mine Safety no longer has primary inspection jurisdiction of coal mines - federal MSHA covers that - but it does administer 5 examinations and certifications for specific safety related occupations within coal mines. It also visits every active coal mine in the state through its Office of Coal Mine Safety several times a year to ensure that each company has the proper safety procedures in place. The Division also inspects thousands of boilers and elevators every year in the state.



The Division currently employs a Division Director who also inspects large coal and natural gas fired power plants, 5 boiler/pressure vessel inspectors, 6 elevator inspectors, an Office of Coal Mine Safety Director, and office staff. The Division also deputizes approximately 85 non-state boiler and pressure vessel inspectors each year that perform safety inspections.



## Did you Know?

### Utah Workplace Fatalities

According to a Census of Fatal Occupational Injuries (CFOI) study, Utah recorded a preliminary count of 39 work-related fatalities in 2012, the same number as in 2011. Nationally, the preliminary count of 4,383 fatal injuries was lower than the revised count of 4,693 in 2011. See our [press release](#).

### Parowan Office Hours

Please remember that the Adjudication Division's Parowan office is closed on Fridays. Anyone needing services on Fridays can call the Salt Lake Office at: 800-530-5090.

You may also file your documents by email to: [casefiling@utah.gov](mailto:casefiling@utah.gov).

## Utah SHARP Recipient Western Metals Recycling (*Provo*)

By: Catherine Van Duser, Consultant, Utah Occupational Safety & Health Division (UOSH)



The **SHARP** (*Safety and Health Awards and Recognition Program*) is an OSHA awards program that recognizes small business companies that exceed the norm in safety and health facilities management. An initial condition of recognition includes workplace injury and illness incidence rate below the North American Industry Classifications System (NAICS) average; as indicated by days away from work, restricted work activity or job transfer (DART) and total recordable cases (TRC). Employers are recognized with a presentation of a certificate, a plaque, and a flag designed to fly at the company's facility indicating their commitment to the tenets of the program.

**Western Metals Recycling** (*Provo*) is the most recent SHARP recipient, awarded May, 2013. The Provo facility is a state-of-the-art nonferrous recycling center.

The company prides itself on its extensive efforts to ensure all employees receive quality safety and health training. Supervisors also participate in an intensive, two day conference with their peers, including a healthy dose of competitive comparison between the various locations of the company. The Provo facility has comprehensive written safety and health programs, initiates frequent in-house inspections and includes an annual administrative review. All incidents are investigated by a company core team that includes salaried and hourly employees. They have clear and established safety and health goals and the commitment to achieve them. Western Metals Recycling has four facilities in the State, two have achieved SHARP status and two more have requested participation in the program.

If your company would like to participate in this program, go to: <http://laborcommission.utah.gov/divisions/UOSH/PrivateSector.html>

## The new face of Hazard Communication in the workplace:

# OSHA's Global Harmonization Standard of Classification and Labeling of Chemicals.

By: **Evelyn Partner**, *Public Sector Safety & Health Consultant Utah Occupational Safety & Health (UOSH)*

Federal OSHA adopted the update of the Hazard Communication standard, known as the Global Harmonization Standard or GHS on May 25, 2012. The GHS includes criteria for the classification of health, physical and environmental hazards, as well as specifying what information should be included on labels of hazardous chemicals and safety data sheets. Utah's state plan OSHA adopted it on November 25, 2012. The new standard updates the existing Hazard Communication standard (1910.1200) to make workplace chemical safety and health information more universal and enhance hazard understanding for employees.

### There are some critical dates by which employers are required to take action. These are:

- **December 1, 2013** – Employers must train employees on what to expect for new chemical labels and Safety Data Sheets (SDS's)
- **June 1, 2015** – Chemical manufacturers and importers must comply with all standard requirements except that they can sell previously manufactured materials with old labels until December 1, 2015
- **June 1, 2016** – All employers must have policies, signs, SDS's, and programs updated

There are a number of resources available to help employers understand the new standard and train their employees about the changes that will affect them.

Request a free, confidential visit from Utah OSHA Consultation to evaluate your GHS program. Send requests to:

UOSH Consultation (801)530-6855, Fax:(801)530-6992, or 160 E 300 S 3rd floor, Salt Lake City, UT 84114-6650

Federal OSHA New Hazard Communication Standard Web Page:

<https://www.osha.gov/dsg/hazcom/index.html>

Free on-line 24 minute video produced by the state of Maine Consultation services: <http://www.mccs.me.edu/business/ghsvideo.html>



# Appellate Decisions

This quarter the Utah Supreme Court and the Utah Court of Appeals issued six decisions involving Labor Commission cases. The full text of these decisions is available at [www.utcourts.gov/opinions/](http://www.utcourts.gov/opinions/). The decisions issued by the court this quarter dealt with the Utah Administrative Procedures Act, the Utah Workers' Compensation Act, and the Utah Antidiscrimination Act.

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## Utah Supreme Court

**Murray v. Labor Commission, Utah State Parks and Recreation and Workers Compensation Fund** (2013 UT 38; issued June 28, 2013). Mr. Murray was working for Utah State Parks & Recreation doing boating patrol when a wave approximately six inches high went under the boat and caused him to lose his balance. Mr. Murray was wearing a 15 pound service belt and a one pound life vest at the time and had to twist slightly to regain his balance. Mr. Murray then felt pain in his back and sought treatment, which revealed that he had a pre-existing back problem that was aggravated by the work accident. The Commission determined that the more stringent standard of legal causation applied to Mr. Murray's claim and concluded that he did not meet that standard because the exertion of twisting to regain his balance was not unusual or extraordinary. The Utah Court of Appeals affirmed the Commission's decision and the Utah Supreme Court took the case on appeal. The Supreme Court clarified that the Court of Appeals should have viewed the issue of legal causation as a mixed question of fact and law. The Supreme Court's analysis pertained to the Utah Administrative Procedures Act and the correctness standard for an agency's interpretation of a statutory term outlined in *Morton International, Inc. v. Tax Commission*, 814 P.2d 581 (Utah 1991). The Supreme Court overruled *Morton* to the extent it was inconsistent with the standard applying to mixed questions of fact and law. Ultimately, the Supreme Court agreed with the Court of Appeals and the Commission that Mr. Murray's back injury was not legally caused by the accident because it did not involve an unusual or extraordinary exertion.

**Layne Jex v. Labor Commission, Precision Excavating and Owners Insurance Co.** (2013 UT 40; issued July 9, 2013). Mr. Jex was working for Precision Excavating at a remote location that required him and other employees to shuttle to and from the worksite. On the date of the accident, Mr. Jex had driven his own truck to the worksite and was preparing to return home when he offered a ride to a coworker. The coworker accepted and the two men were traveling home when one of the truck's tires came apart and caused the truck to roll over. The

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Continued from Page (8)

## Appellate Decisions

Commission denied Mr. Jex's claim for benefits based on the "going and coming rule" which generally provides, with some exceptions, that injuries sustained while traveling to and from work are not compensable. The Court of Appeals affirmed the Commission's decision and the Supreme Court accepted Mr. Jex's petition to hear the case. The Supreme Court rejected Mr. Jex's argument that he fell within an exception to the going and coming rule because his truck was effectively an instrumentality of his employer's business. The Supreme Court clarified the instrumentality exception by explaining that even though transporting a coworker and himself home from the worksite may be seen as conferring a benefit to Mr. Jex's employer, the truck was not under the employer's control and could not be interpreted as incidental to the course of his employment. The Supreme Court therefore affirmed the Court of Appeals' and Commission's decision denying benefits to Mr. Jex.

### Utah Court of Appeals

**Green v. Labor Commission, ABF Freight Systems and American Insurance Co.** (2013 UT App. 165; issued July 5, 2013). Mr. Green asserted that he injured his neck while attempting to disconnect a trailer from a truck and reported the injury as resulting from a work accident in May 2009. The Commission reviewed the record and noted that the only clear evidence that Mr. Green attributed his neck condition to a work accident was a note from one of his doctors in December 2010, well after the 180-day time limit for reporting work injuries imposed by the Utah Workers' Compensation Act. The Commission also noted that Mr. Green's other doctors did not mention his neck problems were related to a work injury, and that his own testimony was unclear with regard to whether he reported the injury or attributed it to a work accident when he discussed his neck problems with his employer. The Commission denied Mr. Green's claim based on the lack of evidence that he had reported his

injury within 180 days. The Court of Appeals upheld the Commission's decision after noting that the evidence in favor of Mr. Green was unclear while the evidence to the contrary could be reasonably interpreted to show that he had not reported the injury on time.

### **Kunej v. Labor Commission and University of Utah** (2013 UT App. 172; issued July 11, 2013).

Mr. Kunej alleged that the University of Utah discriminated against him on account of his gender when it declined to hire him for many different jobs during 2007. The Commission's Appeals Board rejected Mr. Kunej's arguments that the University of Utah chose not to hire him because he is male, that the University's hiring practices had a disparate impact on males, or that the ALJ was biased in favor of the University. Specifically, the Appeals Board disagreed with Mr. Kunej's contention that he was better qualified than the female applicants hired by the University instead of him. The Appeals Board also concluded there was no indication the ALJ was biased or that the data he presented showed a disparate impact against male job applicants. The Court of Appeals affirmed the Appeals Board's decision after concluding that dismissal of Mr. Kunej's complaint was appropriate and that Mr. Kunej failed to establish procedural error or bias such that the Appeals Board's decision should be disturbed.

**Johnston v. Labor Commission, Viracon and New Hampshire Insurance Co.** (2013 UT App. 179; issued July 18, 2013). Mr. Johnston claimed workers' compensation benefits for injuries to his neck, back and right arm allegedly sustained while working for Viracon in May 2009. Before going to work on the date of the accident, Mr. Johnston had undergone a routine physical examination and complained of neck problems and low-back pain. The medical aspects of Mr. Johnston's claim were referred to a medical panel, which concluded the work accident resulted in only temporary injuries. Mr. Johnston objected to the medical panel's findings and requested a hearing on the panel's report, but the

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*Continued from Page (9)*

## Appellate Decisions

ALJ overruled the objection and denied the request for a separate hearing. The Commission's Appeals Board affirmed the ALJ decision and denied Mr. Johnston's claim for benefits based on the medical evidence, including the medical panel's report. On appeal, the court affirmed the Appeals Board's decision noting that the ALJ had not abused her discretion in declining to hold a hearing on Mr. Johnston's objection because the objection was not well-taken based on the evidence.

**Washington County School District v. Labor Commission and Steven Brown** (2013 UT App. 205; issued August 22, 2013). Mr. Brown sustained a compensable back injury while working as a bus driver

for Washington County School District in 2003. A few years later in 2007, Mr. Brown re-injured his back while attending a community event. The medical evidence showed that the work injury in 2003 contributed to Mr. Brown's subsequent back problems and the Commission awarded benefits to Mr. Brown. Washington County appealed the Commission's decision to the Court of Appeals, arguing that the 2007 event severed the causal connection between Mr. Brown's employment and his back condition. The court affirmed the Commission's decision after finding that Mr. Brown's subsequent back problems were the natural result of his original work-related back injury. The court also noted that Washington County had failed to preserve its argument regarding a different medical causation standard and that the matter was not required to be referred to a medical panel based on the evidence presented.

# Rules Corner

Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted the following substantive rule. If you have questions or concerns about this rule, please call the Labor Commission at 801-530-6953.

### **Rule 600-200-1** Administration

**Business hours.** This update extends the Commission's hours for the purposes of accepting official documents filed with the Commission. Official documents filed electronically, either by facsimile or email, will be considered timely if filed by midnight on the day the document is due.

*Effective September 2013*

### **Utah Labor Commission**

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